

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Response
SERIAL NUMBER	86260324
LAW OFFICE ASSIGNED	LAW OFFICE 111
MARK SECTION	
MARK	<a href="http://tmng-al.uspto.gov/resting2/api/img/86260324/large">http://tmng-al.uspto.gov/resting2/api/img/86260324/large</a>
LITERAL ELEMENT	VIRTUALVIEWER
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim t
ARGUMENT(S)	
<p>Dear Ms. Queen,</p> <p>In response to your Office Action dated July 7, 2015, I am as you suggested submitting additional evidence</p> <p>First, I am attaching the statements of five customers of the applicant, affirming that the mark VIRTUALV term used in the industry. These statements are from employees of:</p> <p>ARAG IT</p> <p>Federal Emergency Management Authority</p> <p>Leidos, Inc.</p> <p>OpenDoc, Limited</p> <p>Process Engineering, Inc.</p> <p>I cannot emphasize too strongly the value of these statements. Customers, after all, owe the applicant nothing applicant means their opinions have a high level of credibility.</p> <p>Second, here is a list of major trade shows at which the applicant maintained a booth and promoted its VIR Office Action for a photo of a typical booth display):</p>	

AIIM Annual Conference	2008 - 2011
AIIM Seminar Roadshows	2009
Alfresco Amsterdam	2015
Alfresco Boston	2013
Alfresco London	2014
Alfresco Roadshows	2013-2015
Alfresco San Francisco	2014
Alfresco SKO	2014-2015
DMS Forum	2009-2013
Document Strategy Forum	2013-2015
EMC Usergroup Series	2008-2011
EMC World	2008-2011 then 2015
Gilbane Conference	2012
HIMSS Annual Conference	2012-2015
IBM Insight /FileNet IOD	2008-2015
IBM UserNet / Content Roadshow Series	2008-2015
McKesson Insight	2010-2014

Except where noted, these were all national events, reaching customers across the entire range of industries. A few words about some of them may be useful.

- AIIM stands for Association for Information and Image Management, which is the global organization of information and image management professionals.
- Alfresco is one of the world's largest providers of cloud-based content-management systems. The applicant has been a customer of Alfresco since 2008. The Alfresco events noted above are conferences to which all of Alfresco's customers are invited to pitch its VIRTUALVIEWER product to those customers.
- HIMSS stands for Healthcare Information Management Systems Society, which is the largest organization of healthcare information management professionals. The applicant attended its annual conference in the years indicated.

Third, I submit herewith more detail on the applicant's expenditures in promoting VIRTUALVIEWER over the years. The applicant's expenditures on promoting VIRTUALVIEWER through 2014 totaled roughly \$1,800,000. By year, these expenses were:

2008 = \$293,820.10 (this was the year of brand launch, thus a higher rate of expenditure than in the next few years)

2009 = \$100,691.50

2010 = \$175,242.55

2011 = \$215,679.80

2012 = \$204,865.15

2013 = \$312,160.45

2014 = \$480,482.50

The largest category of expense (over \$520,000) was for the trade shows listed above, and similar events; the

roadshows. These categories of expense are also particularly effective in fostering brand recognition because categories of expense included the company's own website and pay-per-click ads on the Google and other

Marketing expenses for 2015 were the highest yet: \$498,291.00. This figure includes a large expense for p

Fourth, I submit a chart showing sales growth of VIRTUALVIEWER over the life of the brand. As you will see, trade shows and other extensive marketing efforts during those years had the intended effect.

The applicant respectfully submits that all this evidence, in addition to the evidence previously submitted, of exclusive use, and very substantial investment in brand recognition, it has established secondary meaning for customers show that this is not just a logical inference from its branding efforts, but that secondary meaning

Yours sincerely,

William Strong

## EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	<a href="#">evi_502459145-20160107172500881665_. Statement o</a>
CONVERTED PDF FILE(S) (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\862\603\86260324</a>
ORIGINAL PDF FILE	<a href="#">evi_502459145-20160107172500881665_. Statement o</a>
CONVERTED PDF FILE(S) (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\862\603\86260324</a>
ORIGINAL PDF FILE	<a href="#">evi_502459145-20160107172500881665_. Statement o</a>
CONVERTED PDF FILE(S) (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\862\603\86260324</a>
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ORIGINAL PDF FILE	<a href="#">evi_502459145-20160107172500881665_. VIRTUALV</a>
CONVERTED PDF FILE(S) (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\862\603\86260324</a>
DESCRIPTION OF EVIDENCE FILE	The first five exhibits are statements of customers of the acquired secondary meaning in the industry. The last is a
SIGNATURE SECTION	
RESPONSE SIGNATURE	/William S. Strong/
SIGNATORY'S NAME	William S. Strong

<b>SIGNATORY'S POSITION</b>	Attorney of record, Massachusetts bar member
<b>SIGNATORY'S PHONE NUMBER</b>	617-227-7031
<b>DATE SIGNED</b>	01/07/2016
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Thu Jan 07 17:31:05 EST 2016
<b>TEAS STAMP</b>	USPTO/RFR-XX.XXX.X.XXX-20 160107173105087428-862603 24-55054acbd2cbfeddc31f12 6d7ede599ff8dfb4e71385d82 2baea4ea17abf679cf64-N/A- N/A-20160107172500881665

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86260324** VIRTUALVIEWER(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86260324/large>) has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

Dear Ms. Queen,

In response to your Office Action dated July 7, 2015, I am as you suggested submitting additional evidence of distinctiveness.

First, I am attaching the statements of five customers of the applicant, affirming that the mark VIRTUALVIEWER is distinctive of the applicant's product and is not a term used in the industry. These statements are from employees of:

ARAG IT

Federal Emergency Management Authority

Leidos, Inc.

OpenDoc, Limited

Process Engineering, Inc.

I cannot emphasize too strongly the value of these statements. Customers, after all, owe the applicant nothing; that they were willing to submit statements for the applicant means their opinions have a high level of credibility.

Second, here is a list of major trade shows at which the applicant maintained a booth and promoted its VIRTUALVIEWER product (see my response to your previous Office Action for a photo of a typical booth display):

AIIM Annual Conference	2008 - 2011
AIIM Seminar Roadshows	2009
Alfresco Amsterdam	2015
Alfresco Boston	2013
Alfresco London	2014
Alfresco Roadshows	2013-2015
Alfresco San Francisco	2014
Alfresco SKO	2014-2015
DMS Forum	2009-2013
Document Strategy Forum	2013-2015
EMC Usergroup Series	2008-2011
EMC World	2008-2011 then 2015
Gilbane Conference	2012
HIMSS Annual Conference	2012-2015
IBM Insight /FileNet IOD	2008-2015
IBM UserNet / Content Roadshow Series	2008-2015
McKesson Insight	2010-2014

Except where noted, these were all national events, reaching customers across the entire range of industries needing sophisticated document management capability. A few words about some of them may be useful.

- AIIM stands for Association for Information and Image Management, which is the global organization of information professionals.
- Alfresco is one of the world's largest providers of cloud-based content-management systems. The applicant's product is purchased by Alfresco customers to run with the Alfresco system. The Alfresco events noted above are conferences to which all of Alfresco's customers are invited, giving the applicant the opportunity to pitch its VIRTUALVIEWER product to those customers.
- HIMSS stands for Healthcare Information Management Systems Society, which is the largest organization of healthcare IT professionals in the world. The applicant attended its annual conference in the years indicated.

Third, I submit herewith more detail on the applicant's expenditures in promoting VIRTUALVIEWER over the past eight years. As previously submitted, marketing expenses through 2014 totaled roughly \$1,800,000. By year, these expenses were:

2008 = \$293,820.10 (this was the year of brand launch, thus a higher rate of expenditure than in the next few years)

2009 = \$100,691.50

2010 = \$175,242.55

2011 = \$215,679.80

2012 = \$204,865.15

2013 = \$312,160.45

2014 = \$480,482.50

The largest category of expense (over \$520,000) was for the trade shows listed above, and similar events; the next largest (over \$380,000) was for sponsorships and roadshows. These categories of expense are also particularly effective in fostering brand recognition because they involve person-to-person contact. Other major categories of expense included the company's own website and pay-per-click ads on the Google and other search engines.

Marketing expenses for 2015 were the highest yet: \$498,291.00. This figure includes a large expense for professional public relations assistance.

Fourth, I submit a chart showing sales growth of VIRTUALVIEWER over the life of the brand. As you will see, sales went up six-fold from 2010 to 2014. Clearly, the trade shows and other extensive marketing efforts during those years had the intended effect.

The applicant respectfully submits that all this evidence, in addition to the evidence previously submitted, clearly demonstrates that over eight years of continuous exclusive use, and very substantial investment in brand recognition, it has established secondary meaning for its VIRTUALVIEWER mark. The testimonials of its customers show that this is not just a logical inference from its branding efforts, but that secondary meaning is actually perceived by the relevant consumers.

Yours sincerely,

William Strong

## **EVIDENCE**

Evidence in the nature of The first five exhibits are statements of customers of the applicant demonstrating that the VIRTUALVIEWER mark as acquired secondary meaning in the industry. The last is a chart showing sales of the VIRTUALVIEWER product. has been attached.

**Original PDF file:**

[evi\\_502459145-20160107172500881665\\_. Statement of Distinctiveness for VIRTUALVIEWER - ARAG IT.pdf](#)

**Converted PDF file(s)** ( 1 page)

[Evidence-1](#)

**Original PDF file:**

[evi\\_502459145-20160107172500881665\\_. Statement of Distinctiveness for VIRTUALVIEWER - FEMA.pdf](#)

**Converted PDF file(s)** ( 1 page)

[Evidence-1](#)

**Original PDF file:**

[evi\\_502459145-20160107172500881665\\_. Statement of Distinctiveness for VirtualViewer - Leidos.pdf](#)

**Converted PDF file(s)** ( 1 page)

[Evidence-1](#)

**Original PDF file:**

[evi\\_502459145-20160107172500881665\\_. Statement of Distinctiveness for VIRTUALVIEWER - OpenDoc.pdf](#)

**Converted PDF file(s)** ( 1 page)

[Evidence-1](#)

**Original PDF file:**

[evi\\_502459145-20160107172500881665\\_. t of Distinctiveness for VIRTUALVIEWER - Process Engineering.pdf](#)

**Converted PDF file(s)** ( 1 page)

[Evidence-1](#)

**Original PDF file:**

[evi\\_502459145-20160107172500881665\\_. VIRTUALVIEWER sales 2008-2015\\_graph.pdf](#)

**Converted PDF file(s)** ( 1 page)

[Evidence-1](#)

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /William S. Strong/ Date: 01/07/2016

Signatory's Name: William S. Strong

Signatory's Position: Attorney of record, Massachusetts bar member

Signatory's Phone Number: 617-227-7031

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86260324

Internet Transmission Date: Thu Jan 07 17:31:05 EST 2016

TEAS Stamp: USPTO/RFR-XX.XXX.X.XXX-20160107173105087

428-86260324-55054acbd2cbfeddc31f126d7ed

e599ff8dfb4e71385d822baea4ea17abf679cf64

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STATEMENT CONCERNING DISTINCTIVENESS

I, Frank Gronenborn, submit this statement in support of the application of Snowbound Software Corporation to register the mark VirtualViewer on the Principal Register of the United States Patent and Trademark Office (Serial Number 86260324).

I am employed by ARAG IT in the position of software developer and architect. I have worked with products developed by the document imaging and storage industry for 18 years. As such I have personal knowledge of the various vendors that operate in this field. My company is a customer of Snowbound Software.

The document imaging and storage industry is a fairly concentrated niche industry. Customers tend to be, like my company, businesses that depend on the ability to image, store, and retrieve huge numbers of documents.

I have been aware of Snowbound Software's VirtualViewer product for approximately 8 years.

In my opinion there is no doubt that the name VirtualViewer stands for one thing only, and that is Snowbound Software's product. As far as I know, people in our industry do not use the term "virtual viewer" as a descriptive term for the class of products to which Snowbound Software's product belongs. The term of art in my company for that class of product is ImageViewer-WebFrontend. Therefore, when I see or hear the term VirtualViewer I understand it to be referring exclusively to Snowbound Software's product.

Date: 2016-01-02



Frank Gronenborn

#### STATEMENT CONCERNING DISTINCTIVENESS

I, Kelvin Waller submit this statement in support of the application of Snowbound Software Corporation to register the mark VirtualViewer on the Principal Register of the United States Patent and Trademark Office (Serial Number 86260324).

I am employed by United States of America Department of Homeland Security of The Federal Emergency Management Agency in the position of Software Manager I have worked in the document imaging and storage contract management industry for 3.5 years. As such I have personal knowledge of the various vendors that operate in this field. My company is a customer of Snowbound Software.

The document imaging and storage industry is a fairly concentrated niche industry. Customers tend to be, like my company, businesses that depend on the ability to image, store, and retrieve huge numbers of documents.

I have been aware of Snowbound Software's VirtualViewer product for approximately 3 years. I use this product in my own work. I attend trade shows and user-group meetings where Snowbound Software promotes this product. The trade shows and user-group meetings that occur in this niche market are the following: Program based and Agency specific focus groups. To the best of my knowledge Snowbound Software has attended all of these, promoting its VirtualViewer and other products. VirtualViewer has a very visible presence in our industry, and is a very well-regarded product.

In my opinion there is no doubt that the name VirtualViewer stands for one thing only, and that is Snowbound Software's product. People in our industry do not use the term "virtual viewer" as a descriptive term for the class of products to which Snowbound Software's product belongs. The term of art in our industry for that class of product is document viewer related. Therefore, when I see or hear the term VirtualViewer I understand it to be referring exclusively to Snowbound Software's product.

Date: 12/30/2015

KELVIN  
M  
WALLER

Digitally signed by KELVIN  
M WALLER  
DN: c=US, o=U.S.  
Government,  
ou=Department of  
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ou=FEMA, ou=People,  
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## STATEMENT CONCERNING DISTINCTIVENESS

I, Daniel Klute, submit this statement in support of the application of Snowbound Software Corporation to register the mark VirtualViewer on the Principal Register of the United States Patent and Trademark Office (Serial Number 86260324).

I am employed by Leidos, Inc., of Reston, VA, in the position of Consulting Employee/Technical Director. I have worked in the document imaging, content and records management industry for thirty years. As such I have personal knowledge of the various vendors that operate in this field. My contracted customer is a customer of Snowbound Software.

The document imaging, content and records management industry is a fairly concentrated niche industry. Customers tend to be, like my customers, businesses that depend on the ability to image, store, and retrieve huge numbers of documents.

I have been aware of Snowbound Software's VirtualViewer product for approximately eight years. I use this product in my own work. I attend trade shows and user-group meetings where Snowbound Software promotes this product. The trade shows and user-group meetings that occur in this niche market are the following: the Association for Information and Image Management (AIIM) and the Association of Records Managers and Administrators (ARMA) conferences. To the best of my knowledge Snowbound Software has attended all of these, promoting its VirtualViewer and other products. VirtualViewer has a very visible presence in our industry, and is a very well-regarded product.

In my opinion there is no doubt that the name VirtualViewer stands for one thing only, and that is Snowbound Software's product. People in our industry do not use the term "virtual viewer" as a descriptive term for the class of products to which Snowbound Software's product belongs. The term of art in our industry for that class of product is either image viewer, content viewer or file viewer. Therefore, when I see or hear the term VirtualViewer I understand it to be referring exclusively to Snowbound Software's product.

Date: 29 December 2015

Daniel Klute

### STATEMENT CONCERNING DISTINCTIVENESS

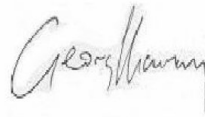
I, George Maurey, submit this statement in support of the application of Snowbound Software Corporation to register the mark VirtualViewer on the Principal Register of the United States Patent and Trademark Office (Serial Number 86260324).

I am employed by OpenDoc Limited, in the position of Director. I have worked in the document imaging and storage industry for 18 years. As such I have personal knowledge of the various vendors that operate in this field. My company is a customer of Snowbound Software.

The document imaging and storage industry is a fairly concentrated niche industry. Customers tend to be, like my company, businesses that depend on the ability to image, store, and retrieve huge numbers of documents.

I have been aware of Snowbound Software's VirtualViewer product for approximately 8 years. I use this product in my own work. I attend trade shows and user-group meetings where Snowbound Software promotes this product. The trade shows and user-group meetings that occur in this niche market are the following: DMS Germany, Forum GED Paris, and many others. To the best of my knowledge Snowbound Software has attended all of these, promoting its VirtualViewer and other products. VirtualViewer has a very visible presence in our industry, and is a very well-regarded product.

In my opinion there is no doubt that the name VirtualViewer stands for one thing only, and that is Snowbound Software's product. People in our industry do not use the term "virtual viewer" as a descriptive term for the class of products to which Snowbound Software's product belongs. The term of art in our industry for that class of product is document viewer or Document renderer. Therefore, when I see or hear the term VirtualViewer I understand it to be referring exclusively to Snowbound Software's product.

A handwritten signature in black ink, appearing to read "George Maurey". The signature is fluid and cursive, with the first name "George" being more prominent than the last name "Maurey".

Date: 31/12/2015

George Maurey

### STATEMENT CONCERNING DISTINCTIVENESS

I, Robert Bauer, submit this statement in support of the application of Snowbound Software Corporation to register the mark VirtualViewer on the Principal Register of the United States Patent and Trademark Office (Serial Number 86260324).

I am employed by Process Engineering Inc, of Avon NC, in the position of Chief Technical Officer. I have worked in the document imaging and storage industry for 30+years. As such I have personal knowledge of the various vendors that operate in this field. My company is a customer of Snowbound Software.

The document imaging and storage industry is a fairly concentrated niche industry. Customers tend to be, like my company, businesses that depend on the ability to image, store, and retrieve huge numbers of documents.

I have been aware of Snowbound Software's VirtualViewer product for approximately 7 years. I use this product in my own work. I attend trade shows and user-group meetings where Snowbound Software promotes this product. The trade shows and user-group meetings that occur in this niche market are the following: Defense and Intelligence Related Document Search and Review. To the best of my knowledge Snowbound Software has attended all of these, promoting its VirtualViewer and other products. VirtualViewer has a very visible presence in our industry, and is a very well-regarded product.

In my opinion there is no doubt that the name VirtualViewer stands for one thing only, and that is Snowbound Software's product. People in our industry do not use the term "virtual viewer" as a descriptive term for the class of products to which Snowbound Software's product belongs. The term of art in our industry for that class of product is browser based viewer. Therefore, when I see or hear the term VirtualViewer I understand it to be referring exclusively to Snowbound Software's product.

Date: January 5, 2016



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Robert P Bauer

## VV Sales

